



Paper No. 7

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OFFICE OF PETITIONS

In re Application of
Colborn, et al.
Application No. 10/066,544
Filed: October 19, 2001
Attorney Docket No. 04813.0028.NPUS00
For: FUEL CELL SYSTEM

DECISION DISMISSING
PETITION

This is a decision on the petition filed April 22, 2002 (certificate of mailing date April 15, 2002) requesting that Figure 1A submitted on April 22, 2002, be accorded a filing date of October 19, 2001.

The petition is **dismissed**.

The application was filed on October 19, 2001. On March 18, 2002, the Office of Initial Patent Examination mailed a Notice stating that Figure 1A described in the specification appeared to have been omitted.

In response to the Notice, petitioners timely filed the present petition. Petitioners request that drawing figure 1A be accorded a filing date of October 19, 2001 because the entire contents of a another related application was specifically incorporated by reference into the above-identified application when the above-identified application was filed.

The Office allows an applicant to rely upon an incorporation by reference of a prior application when a portion of the later filed application has been inadvertently omitted.

MPEP 201.06(c) states that:

... an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the ... application to include any subject matter in such prior application(s), without the need for a petition.

If petitioners desire that the examiner consider omitted Figure 1A as part of the original disclosure, then petitioners should submit Figure 1A as an amendment. Any such amendment will, of course, be reviewed by the examiner for new matter. See MPEP 608.02(a).

Figure 1A submitted with the petition will not be entered at this time. The original application papers will include only those application papers present on the date of deposit.

Since the present petition was not necessitated by any error on the part of the Office, the \$130.00 petition fee will not be refunded.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 19, 2001, using only the application papers filed on October 19, 2001.

Telephone inquiries should be directed to the undersigned at (703) 308-6712.



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